

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION

CONTEMPT PETITION NO.226 OF 2005

Burjor Cawasji Sarkari and another).. Petitioners
Versus

Silloo K. Kavarana and others).. Respondents

Mr.Nusarat Shah i/b.Mr.Sameer R. Bhalekar for the
Petitioners.

Mr.S.D. Mogre for the Respondents.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 2ND SEPTEMBER 2005

P.C.:

. According to the Petitioners, in this Contempt
Petition, the Respondents-trustees have not permitted
them to use the main gate of the Sanatorium for ingress
and egress in violation of the order passed by the City
Civil Court dated 9th April 2002 in Notice of Motion
No.676 of 2002. The order of the City Civil Court has
held vide paragraph 11 thus :

"11. Considering all the above, the prayers (a) (b)
are granted i.e. to say pending hearing and final
disposal of this suit, the Plaintiffs, their
agents, servants, security guards and/or any
persons claiming through them are directed to keep
open the main gate at the entrance of Bhabha
Sanatorium complex for ingress and egress of
defendants at all reasonable times and further the
Plaintiffs, their agents, servants, security guards
and/or any person claiming through them are

restrained from obstructing and/or preventing the defendants their visitors from entering the Sanatorium premises through main gate and taking auto rickshaws and taxis through main gate upto entrance of Sanatorium building No.1. Considering the safety and security, the Plaintiffs to keep open the gate at all reasonable times during day and close the same after 8.30 p.m. or 9.00 p.m. It is further clarified that no vehicles, taxi, private cars etc. be parked in the compound and the defendants should not create problems to the Plaintiffs by bringing taxis after 8.30 p.m. or 9.00 p.m."

2. This order has been modified by this Court in Appeal From order No.638 of 2002 on 29th July 2003 by passing the following order :

" After hearing the parties for some time, the learned Counsel for the respondents nos.1 to 4 - trustees of Sorabji B. Bhabha Sanatorium Trust, states that the gate of the Sanatorium will be opened after 8.30 P.M. on the days when the appellants were to come beyond 8.30 P.M. However, the appellants should inform the Manager of the Sanatorium in advance on the days when appellant nos.2 or 2 will be coming to the Sanatorium after 8.30 P.M. The learned Counsel for the Respondents also makes it clear that in case of any emergency, a Doctor or Ambulance will also be permitted within the Sanatorium premises and the gate will be opened after 8.30 P.M. and even a private car and rickshaws and taxies will be allowed to enter. The learned Counsel for the appellants states that the appellants will pay the entire arrears of monthly charges quantified of Rs.507.50 per month from 1st December, 2000 till 31st July, 2003. The said total monthly charges payable for all the aforesaid months will be paid to the Manager of the aforesaid Sanatorium within two weeks from today. The learned Counsel for the appellants also state on instruction from appellant no.1 that the appellant will continue to pay regularly the monthly charges with the Manager of the Sanatorium on or before 10th of each month from August-2003. The appellants also undertake that they will not induct any third party in their room."

3. The Petitioners complained that the trustees

have not permitted them to use the main gate to enter into the Sanatorium premises during the stipulated time.

4. Mr.Mogre for the Respondents states that there are two gates for entering into the Sanatorium. One is a small gate through which any person can walk and the other is the main gate through which vehicles can enter. The small gate is kept open for twenty four hours whereas the main gate is opened by the security guards stationed at the gate whenever any inmate of the Sanatorium enters in a vehicle or for permitting access to an ambulance.

5. This statement of Mr.Mogre is accepted. The inmates of the Sanatorium or their relatives and visitors can enter through the small gate, on foot and vehicles can enter through the main gate at all times after the security guard opens the said gate. Mr.Mogre's statement that a security guard is stationed at the main gate for twenty four hours is also accepted.

6. In view of the above, nothing survives in the present Contempt Petition and the same is disposed of accordingly.